the general cost of corporate long-term and short-term debt is required to be identified due to the Commission's capital structure choice, the Commission's proposed methods for quantifying the general costs rates should not be adopted. They would be unnecessarily complex. Also, a random sample of bonds would be inappropriate and less accurate to use when published composite averages are readily available. For instance, Moody's Aa public utility bond yield average, the average that USTA proposes to be used for the trigger mechanism, also could be used here. This impartial source of information would be more reliable than a random sample. Moreover, if "Aa" is the bond rating used to develop the cost of debt, any corresponding "conclusive" capital structure should also be consistent with an "Aa" bond rating.

In determining the general cost of short-term debt, the source of the Commission's proposed ten-day average of unsecured notes sold through dealers by major corporations is unclear.[124] If needed at all, a published source should be used. A published source that would function as a reasonable alternative is the Federal Reserve Statistical Release G.13, as it shows the monthly rate on six-month commercial paper.[125]

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[124] Notice at ¶ 80.

[125] Data from Statistical Release G.13 are reprinted in the Survey of Current Business and in the Economic Report of the President.

No capital structure and cost of debt calculations should be so binding that all alternatives are precluded.[126] Again, conditions change and unforeseen circumstances arise. Part 65 should remain flexible, open to other alternatives that may become preferable in the future. The general Form M approach should be codified, as that does not rely on evolving theory,and can allow Form M to continue to evolve as it now does, responsive to changing regulatory needs.

3. Cost of Preferred Stock.

As mentioned above in the discussion of capital structure, preferred stock may be included as a capital structure component. Thus, a methodology for cost of preferred stock should be specified. The cost of preferred stock should be calculated in a manner similar to the cost of debt calculation based on Form M data. There is no need to identify separate preferred stock issues.

The simple Form M approach can again be used. Schedule B-14 of the Form M report shows the preferred stock amount outstanding and the corresponding dividend rates. The approximate cost of preferred stock can be estimated by multiplying the amount outstanding by the dividend rate for each issue, and determining a composite rate. Since the net proceeds and the amortization of issuance costs, discounts, and premiums of preferred stock are not shown on Form M, any rule that includes a preferred stock component

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[126] Notice at ¶ 86.

should specify an estimate of net proceeds as a percentage of face value. This estimate can be derived from a reliable sample of issues.

The cost of preferred stock calculation should not be conclusively binding for the same reasons as the capital structure and the cost of debt should not be conclusively binding.

VII. MISCELLANEOUS ISSUES.

The Commission raises a number of miscellaneous issues late in the Notice.[127] USTA addresses only one of those issues, the detail needed in cost of capital calculations.[128] The Commission wisely suggests that the detail in such calculations is excessive. It suggests that it needs cost of capital calculations to be shown only to the second decimal place in filings. USTA agrees, requesting one clarification. That is, the calculation should be done to at least the third decimal place and then rounded to two decimal places.

VIII. MONITORING AND ENFORCEMENT PROCEDURES.

The Commission raises a number of issues on enforcement of a rate of return prescription that are stated broadly but that merit close analysis.

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[127] Notice at ¶¶s 90-92.

[128] Notice at ¶ 92.

A. The Commission Should Enforce Return Prescriptions Prospectively; No Rule Contemplating Retroactive Refunds Is Lawful Or Warranted.

Illinois Bell Telephone Co. v. FCC, No. 89-1365, ___ F.2d ___ (D.C. Cir. June 16, 1992) set straight the Commission's prior notions about its authority to order retroactive refunds in the name of "enforcing" its rate of return prescription. The Illinois Bell holding is explicit: The Commission's authority to order refunds is limited to rates that were suspended and were in effect subject to an accounting order when the refunds were ordered. Nevertheless, the Notice suggests the Commission believes that New England Tel. & Tel. Co. v. FCC, 826 F.2d 1101 (D.C. Cir. 1987) holds that the Commission still retains some general independent authority to "order carriers to make refunds when they violate a rate of return prescription."[129] New England Telephone holds no such thing - the rates in New England Telephone had been suspended and were in effect subject to an accounting order.[130] On the

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[129] Notice at ¶ 98.

[130] AT&T filed the rates at issue to implement a newly prescribed rate of return. The Commission suspended those rates for one day and subjected them to a category-wide accounting order rather than to "individual accounting requirements" for the purpose of, among other things, determining whether they produced a fair rate of return. See American Tel. & Tel. Co., 58 F.C.C.2d 1, 4-5 at ¶¶ 12-13, 16, 18 (1976).

In opposing certiorari in New England Telephone, the FCC emphasized that it had "suspended the rates for one day and then permitted them to go into effect . . . subject to an accounting order . . . [thereby] retaining the power to compel a refund . . . ." Brief for the Federal Respondents in Opposition at 5, New England Tel. & Tel. Co. v. FCC, 826 F.2d 1101 (D.C. Cir. 1987), cert. denied, 490 U.S. 1039 (1989) (Nos. 88-1249 and 88-1250). The FCC went on to say --

> . . . Section 204 expressly states, that the Commission has authority to require carrier refunds of excess charges if those charges were suspended, allowed to

issue addressed here, New England Telephone does not contradict the Illinois Bell decision.

In short, any "rule" that provides for refunds of existing rates that were not suspended and are not subject to an accounting order violates the filed rate doctrine and the rule against retroactive ratemaking.[131]

1. Any Automatic Refund Plan Would Be Prima Facie Unlawful.

In Arkansas Louisiana Gas Co. v. Hall, 453 U.S. 571 (1981), the Supreme Court noted

> [n]ot only do the courts lack authority to impose a different rate than the one approved by the Commission, but the Commission itself has no power to alter a rate retroactively. 453 U.S. at 578.

In so doing, the Supreme Court cited with approval a D.C. Circuit decision in City of Piqua v. FERC, 610 F.2d 950, 955 (D.C. Cir. 1979), where that Court noted

> the rule against retroactivity is 'a cardinal principle of ratemaking: a utility may not set rates to recoup past losses, nor may the Commission prescribe rates on that principle.' 453 U.S. at 954 (internal bracketing deleted) (quoting Nader v. FCC, 520 F.2d 182, 202 (D.C. Cir. 1974)).

USTA reads the statutory language in §§ 204 and 205 of the Act as a Congressional embrace of this cardinal principle.

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take effect pending an investigation, and subjected to an accounting order. . . . [T]his is precisely what the Commission did with respect to the AT&T rates that are at issue in this case. [Federal Respondents Brief at 23 (references omitted)].

[131] Illinois Bell, ___ F.2d at ___; see also California PUC v. FERC, 894 F.2d 1372, 1383 (D.C. Cir. 1990).

Even if the Commission did have the authority to order refunds, an "automatic" refund mechanism cannot be squared with established legal standards. And, even where refunds may be authorized, the Commission must apply equitable principles in deciding whether or not refunds are appropriate.[132] An "automatic refund" mechanism leaves no room for equitable considerations and, thus, strays from the legal norm.

Moreover, with the absence of a compensating earning mechanism, an automatic refund mechanism is unfair. Accurate forecasting of return levels borders on the impossible for reasons beyond the carrier's control:

> The use of telecommunications services is tied to the well-being of the national economy. Forecasts, even at macro-economic levels, have been somewhat lacking in accuracy and are not expected to improve any time soon.[133]

An agency cannot, consistent with sound ratemaking principles, require that a carrier's "estimate be flawless in retrospect rather than reasonable when made."[134] Yet, a refund plan adopts the impermissible "flawless in retrospect" standard.

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[132] Las Cruces TV Cable v. FCC, 645 F.2d 1401, 1407 (D.C. Cir. 1981) West Virginia PSC v. DOE, 777 F.2d 31, 35 (D.C. Cir. 1985); RCA Global Communications, Inc. v. FCC, 717 F.2d 1429, 1437 (D.C. Cir. 1983); Moss v. CAB, 521 F.2d 298, 303-09 (D.C. Cir. 1975), cert. denied, 424 U.S. 966 (1976).

[133] American Tel. & Tel. Co. (ICAM), 78 F.C.C.2d 1296, 1316 ¶ 67 (1981).

[134] Delmarva Power & Light Co. v. FERC, 770 F.2d 1131, 1142 (D.C. Cir. 1985).

Less directly, the procedures established by the Commission for reviewing and allowing access charges, if they were to be found to indicate that charges that ultimately go into effect are not "carrier-initiated" rates, would preclude both refunds and damages. Arizona Grocery and its offspring preclude damage awards based on a subsequent finding that the rates yielded unreasonably high returns.[135] Moss v. CAB[136] is instructive. There the CAB found that carrier-filed tariffs "may be unjust [or] unreasonable." The Board then "outlined its own fair formula."[137] The Board "made it clear, by threatening to use its power to suspend proposed rates, that only rates conforming to its detailed model would be accepted and not suspended."[138] The CAB simultaneously disclaimed any legal responsibility for the rates filed conforming to the Board's model.[139] To say that those rates were not agency-made rates

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[135] Arizona Grocery v. Atchison, T. & S.F. Ry. Co., 284 U.S. 370, 381 (1932); MCI Telecommunications v. AT&T, 85 F.C.C.2d 994, 1000 (1981).

This Commission applies the Arizona Grocery standard when confronted with the issue of the legal propriety of awarding retroactive refunds. Specifically, the Commission has ruled that:

> "[W]here the agency merely permits the rates to become effective, those rates may subject the carrier to damages liability in a future proceeding should the complainant meet its burden of proving unlawfulness and damages."

MCI Telecommunications v. AT&T, 85 F.C.C.2d at 1000 ¶ 21 (emphasis supplied).

[136] 430 F.2d 891 (D.C. Cir. 1970).

[137] 430 F.2d at 894.

[138] 430 F.2d at 897.

[139] 430 F.2d at 895.

would, the D.C. Circuit ruled, be "blinking reality."[140] As the Moss rates were not carrier-initiated, access rates filed pursuant to this Commission's model and on this Commission's time table have a risk of being found not to be carrier-initiated.

This Commission previously has made explicit that nonconforming tariff revisions would be rejected.[141] On occasion, this Commission has set the formula, set the maximum return, reviewed and rejected various tariff filings and specific tariff wording, with specific directions on how the tariffs were to be revised, and forbade other revisions. If the rates are not carrier-initiated rates, as a matter of law, they cannot be made subject to retroactive reductions by awarding refunds, reparations or damages.

2. Section 205 Does Not Permit Levying "Fines" For Exceeding A Prescribed Return.

The authorized return is a decisional guideline or standard; it is not an enforceable "rule." Nevertheless, the Commission appears to suggest that a rate of return prescription is the same as a tariff rate and, thus, carriers can be fined for violation of that prescription.[142] The Commission's reliance on § 205 is misplaced.

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[140] 430 F.2d at 897.

[141] Cf. Direct Marketing Ass'n v. FCC, 772 F.2d 966, 970-71 (D.C. Cir. 1985).

[142] Notice at ¶ 98 (citing 47 U.S.C. § 205(b).)

Section 205(b) provides that any carrier who "knowingly fails or neglects to obey any order made" pursuant to § 205(a) may be fined up to $12,000. 47 U.S.C. § 205(b). Section 205(a) expressly mentions only one type of order -- a cease and desist order. Thus, the Commission's threshold reliance on § 205 is misplaced.[143]

That aside, § 205(b) empowers the Commission to impose fines only when the carrier "knowingly fails or neglects to obey" a § 205(a) order. 47 U.S.C. § 205(b). The "knowingly fails or neglects" prerequisite precludes automatic imposition of fines for exceeding the prescribed return.

Before the Commission could impose a fine, it would have to demonstrate not only that the carrier violated a §205(a) order, but that it knowingly violated that order. Absolute liability is precluded.

Finally, adoption of a "fine" mechanism, like the adoption of an automatic refund mechanism, would be counterproductive even if lawful. Either mechanism would discourage the introduction of efficiencies and cost reductions by rate-of-return carriers -- to avoid fines or refunds, carriers would be encouraged by the Commission's policies to delay implementing cost-cutting measures.

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[143] See Northern Natural Gas Co. v. FERC, 827 F.2d 779, 786 & n.15 (D.C. Cir. 1987) (en banc) (distinguishing "rate" from "rate of return").

3. The Complaint Process As An Enforcement Mechanism.

In the end, the Commission tentatively concludes that it should "rely on the tariff review and complaint process as [its] primary enforcement mechanisms. . . ."[144]

The complaint process permits ratepayers to challenge the reasonableness of carrier-initiated rates, that is, rates that were not prescribed by the Commission. The Commission appears to view profits in excess of a target return as overearnings, and to view damages as synonymous for complaint purposes. That is incorrect, as D.C. Circuit and Supreme Court cases indicate.

In Aeronautical Radio, Inc. v. FCC, 642 F.2d 1221 (D.C. Cir. 1980), the Court noted that the Communication Act's "complaint procedure" is available to customers who believe that a tariff rate is unlawfully high.[145] But, the Court held, the measure of damages -- even if the complainant proves a tariff rate is unlawfully high -- is not the "full overcharge" but the complainant's actual damages:

> Under these [complaint] provisions protestants may seek actual damages if they believe the rates are unlawfully high. . . . [T]he complaint procedure shifts the burden of proof onto the aggrieved party and may restrict his ultimate relief to actual damages rather than the full overcharge that would have been available had the FCC ordered an investigation. (Aeronautical Radio, 642 F.2d at 1235 n.34).

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[144] Notice at ¶ 98.

[145] Aeronautical Radio, 642 F.2d at 1235.

Similarly, in Southern Ry. Co. v. Seaboard Allied Mining Co., 442 U.S. 444 (1979), the Supreme Court, in interpreting a related provision of the Interstate Commerce Act, stated categorically that where a shipper proves a rate unreasonable in a complaint proceeding his relief is "limited . . . to actual damages rather than a full refund of overcharges."[146]

The courts recognize several fundamental principles. First, "[h]igh profits and just rates are not prima facie incompatible."[147] The Commission itself has accepted that incentive earnings are not unreasonable. Thus, to prove a rate unreasonable, a complainant must show more than the carrier's overall return exceeded the Commission-authorized maximum.[148]

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[146] Southern Ry. Co., 442 U.S. at 455. The ICC does have the authority to award reparations of unreasonable charges in certain instances. This Commission, however, was not given that authority, as the D.C. Circuit pointed out in Nader v. FCC, 520 F.2d 182, 203 n.22 (D.C. Cir. 1975):

> Unlike the Federal Communications Commission, the Interstate Commerce Commission has the power to award reparations to shippers injured by unreasonable charges.

[147] United States v. Public Utilities Comm'n, 158 F.2d 533, 536 (D.C. Cir. 1946).

[148] American Tel. & Tel. Co. v. FCC, 836 F.2d 1386 (D.C. Cir. 1988) holds that a Commission order which requires a carrier to make refunds for categories of individual rates when the carrier's overall earnings are not excessive is arbitrary and capricious. The Commission has recognized that that rule also applies in damage actions. In its "Conditional Suggestion For Rehearing En Banc" in AT&T, the Commission observed:

> If the panel's view was correct, parties complaining about excessive rates . . . under the Communications Act would be unable to obtain refunds or damages unless they could show that the carrier had earned excessive returns overall during the pertinent period.

Second, absent proof that a carrier violated the Act, "past excessive earnings belong to the Company just as past losses must be borne by it." A return prescription cannot be equated with a rate prescription. If that reasoning were valid, a carrier that underearns would be legally bound to collect the deficiency, in exactly the same way a carrier that charges less than the tariff rate is legally obliged to recover the underpayment from customers.

Finally, the Commission seems to believe that its return prescription is binding until supplanted by a represcription and, thus, is enforceable indefinitely. That belief is wrong.[149]

It is not necessary that the Commission reestablish an automatic refund mechanism, and such a mechanism is unlikely to be easily rehabilitated. Prior to the Illinois Bell decision, in AT&T v. FCC, the U.S. Court of Appeals for the D.C. Circuit had invalidated the Commission's refund rules. Later, in Ohio Bell Telephone Co. v. FCC, 949 F.2d 864 (6th Cir. 1991), the Court of Appeals for the Sixth Circuit, in looking at specific strategic pricing arrangements, concluded that automatic refunds that did not balance out underearnings were inconsistent with the Commission's theory of rate of return regulation, and would force carriers to underearn over time. In doing so, it confirmed the view of the D.C. Circuit. That is, the automatic refund rules force carriers to disgorge earnings the Commission deems to be excessive in any category, without allowing those carriers ever to recoup underearnings.

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[149] Nader, 520 F.2d at 205.

The AT&T court suggested the only avenue by which the Commission could rehabilitate a rule: it would have to be, at minimum, "one in which the carrier, in addition to being required to return amounts that exceed a target return, would also be permitted to recover amounts by which it fell short of the target."[150] The Ohio Bell court confirmed that any rule designed along the lines of the Commission's automatic refund rule would be arbitrary and capricious.[151] The Sixth Circuit Court found that even a refund rule that was not "automatic" operated to force underearnings, placing the Ohio Bell situation "virtually on all fours with AT&T."[152]

In effect, then, the Commission cannot ignore the fact of underearnings in any rule that addresses overearnings. In addition, the Commission must consider underearnings in any policy that is put in place concerning complaints about overearnings. Any enforcement mechanism related to the authorized rate of return of carriers must take into account underearnings whenever it addresses overearnings, and must erase any vestige of the AT&T and Ohio Bell defects that work inexorably to undermine the price-earnings balance built into the Act between shareholders and ratepayers.

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150 AT&T v. FCC 836 F.2d 1386, 1392.

151 Ohio Bell v. FCC, 949 F.2d 864, 873-874.

152 Ohio Bell v. FCC, 949 F.2d at 873.

4. Mechanism Structure.

Having said this, the Commission still asks for comment on a mechanism.[153] Assuming arguendo that the lawfulness of a refund mechanism is assessed and one is nevertheless adopted, it should operate on an overall interstate access basis.[154] Category by category refunds are not authorized under recent decisions.

The current buffer zone for earnings operates to recognize that fluctuations may push earnings above the authorized level. The increasing volatility in the marketplace makes it difficult to be precise in targeting. If there is any enforcement mechanism, it should reflect conditions and accommodate a larger buffer zone in the future. A buffer zone of 100 basis points for the remaining rate of return carriers provides accommodation for such a rapidly changing environment, with small dollar risk.

Different buffer zones and monitoring periods, however, cannot address the fundamental infirmity of the automatic refund arrangement.[155] Use of a buffer certainly should not operate to generate administrative expense outweighing any potential refund at or near the buffer threshold. For small exchange carriers, this is uniquely a factor. A high cost exists in the process, though it would generate small dollar transfers to customers. This also argues for a larger buffer zone.

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[153] Notice at ¶¶s 98-99.

[154] Notice at ¶ 100.

[155] Notice at ¶ 100.

Any sharing under the baseline plan being contemplated for rate of return exchange carriers in CC Docket No. 92-135 should be the sole method for addressing earnings for those carriers and should be eliminated at the time it may be eliminated for other carriers.[156] Such sharing would have the same infirmities as are discussed above.

The two year cycle for monitoring has no inherently superior rationale at this time. No other option is any better.[157] There may be commenters who accept monitoring in the current framework as administratively convenient. Monitoring itself is not beyond the Commission's authority. However, administrative convenience does not provide a rationale around which the Commission can construct another refund rule that would contravene the AT&T, Illinois Bell and Ohio Bell cases. The cumbersome fit of this entire framework onto the Act underlines the absence of any Congressional expectation or need for it.

IX. CONCLUSION.

For the reasons set out in these Comments, USTA requests that the Commission revise its Part 65 rules in a manner that provides for flexibility in the development of relevant data in the prescription process, streamlines the hearing process contemplated by section 205 of the Act, and provides in the end for a fairly

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[156] Notice at ¶ 101, n. 114.

[157] Notice at ¶ 102.

computed, fairly developed interstate rate of return.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

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September 11, 1992

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Amendments of Parts 65 and 69 of	)	
the Commission's Rules to Reform	)	CC Docket No. 92-133
the Interstate Rate of Return	)	
Represcription and Enforcement	)	
Processes	)	

TESTIMONY OF WILLIAM E. AVERA

Q. Please state your name and business address.

A. William E. Avera, 3907 Red River, Austin, Texas 78751.

Q. By whom are you employed and in what position?

A. I am a principal in Financial Concepts and Applications, Inc. (FINCAP), a firm engaged in financial, economic, and policy consulting to business and government.

Q. Describe your educational background, professional qualifications, and prior experience.

A. I received a B.A. degree with a major in economics from Emory University. After serving in the U.S. Navy, I entered the Ph.D. program in economics at the University of North Carolina at Chapel Hill. Upon graduation, I joined the faculty at the University of North Carolina and taught finance in the Graduate School of Business. I subsequently accepted a position at the University of Texas at Austin where I taught courses in financial management and investment analysis. I then went to work for International Paper

Company, Inc. in New York City as Manager of Financial Education, a position in which I had responsibility for all corporate education programs in finance, accounting, and economics.

In 1977 I joined the staff of the Public Utility Commission of Texas (PUC) as Director of the Economic Research Division. During my tenure at the PUC, I managed a division responsible for financial analysis, cost allocation and rate design, economic and financial research, and data processing systems, and I testified in a number of cases on a variety of financial and economic issues. Since leaving the PUC in 1979, I have been engaged in my current capacities with FINCAP. I have also served as Lecturer in the Finance Department at the University of Texas at Austin, and taught in the graduate program at St. Edward's University. I am a Chartered Financial Analyst (CFA) and have served as an officer of various professional organizations and societies. A resume which contains the details of my experience and qualifications is attached as Appendix A.

Q. Have you reviewed the Comments of the United States Telephone Association (USTA) in this docket?

A. Yes, I have.

Q. In your opinion, do the USTA's proposals represent sound regulatory policy, consistent with the economic and financial realities of capital markets?

A. Yes. I find no valid reasons to specify now the methodology to be used to determine the rate of return on equity for interstate access service of local exchange carriers (LECs) in future represcriptions; rather, the methodology properly used then should be determined at the time of represcription.

Q. Why do you believe it is prudent to not specifically codify any particular cost of equity methodology to be used to determine the rate of return for LECs?

A. Determining a fair rate of return is one of the most controversial aspects of regulation. Not only does the rate of return have a significant impact on total revenue requirements for access service, but its key component, the fair rate of return on equity, is virtually always contested because the cost of equity is inherently unobservable. Accordingly, it is difficult, if not impossible, to reach a consensus as to the proper methodology to determine a fair rate of return on equity.

Further complicating the determination of a fair rate of return on equity is the dynamic nature of capital

markets. Investors' required rates of return are constantly changing in response to evolving economic conditions and financial circumstances. Moreover, because investors continuously revise their expectations, methods and data that might produce meaningful results in today's economy and financial markets may be ill-suited at the time of the next represcription.

In sum, even if parties could agree on a methodology to determine a fair rate of return on equity for LECs today, it is likely that it would be inapplicable when a represcription is triggered. Accordingly, efforts to resolve methodological issues today are either a wasteful expenditure of resources, or would impose an outdated methodology to determine a fair rate of return on equity in the future.

Q. Can you provide an illustration of why a particular methodology might be inapplicable at the time of a future represcription?

A. Yes. Consider the issue of identifying firms comparable to LECs as the basis for calculating a cost of capital. As stated in the Notice of Proposed Rulemaking and Order:

> Since LECs do not issue stock or borrow money solely to support interstate access service, it is

> impracticable, if not impossible, to measure investor expectations regarding that cost of money directly. Instead, it is necessary to select a company or group of companies to act as a surrogate for the entities that provide LEC interstate access service. The surrogate should face risks similar to those the remaining rate of return LECs encounter in providing that service. (pr.48)

Over time, the population of remaining rate of return LECs will no doubt change as will their risk profile, due to the rapidly evolving telecommunications marketplace. Moreover, any potential surrogate group (e.g., the Standard and Poor's 400 Industrials) will also undergo change in both composition and relative risk. As a result, even if one group of surrogates is regarded as comparable to LECs in 1992, it may no longer be so at the time of the next represcription.

Q. Can you provide an example of how changes in general economic and financial conditions, or the state of the art, might cause a particular methodology to be inapplicable at the time of a future represcription?

A. Yes. As economic and financial conditions change, investors adjust the factors they incorporate in their expectations and risk assessments. Such revisions may affect the applicability of cost of equity estimation techniques such as the constant growth discounted cash flow (DCF) model or risk premium methods (e.g., capital asset pricing model (CAPM)).

In addition, cost of equity estimation techniques are constantly undergoing review, revision, refinement, and testing. This research is being conducted in both the regulated and unregulated arenas, as well as by academicians and professional organizations such as the Association for Investment Management and Research. Accordingly, between now and the next rate of return represcription, existing methods of estimating the cost of equity may be found to be more or less credible, or entirely new methods developed.

Q. Briefly summarize your testimony regarding efforts to resolve currently methodological issues surrounding the represcription of a fair rate of return on equity for LECs.

A. Efforts to specify now the cost of equity methodology to be used to determine the rate of return for LECs at a future represcription would either be misplaced or wasteful. The very same issues will have to be revisited at the time of the next represcription, since failing to consider then-prevailing economic and financial conditions could result in the imposition of an outdated and unreliable methodology to determine a fair rate of return on equity for LECs. Because no meaningful purpose would be served by codifying a methodology, I concur with the USTA's position that the

Commission should continue to permit parties to use any relevant methodology to determine the cost of equity, and in turn, calculate rate of return.

Q. Does this conclude your testimony?

A. Yes, it does.

Affidavit of William E. Avera

FCC Docket No. 92-133

William E. Avera, being first duly sworn, deposes and says that the statements contained in the foregoing testimony on behalf of the United States Telephone Association are true and correct to the best of his knowledge and belief, and that he is authorized to make the same to the Federal Communications Commission.

William E. Avera

Sworn to and Subscribed before me,

this the 4 day of September, 1992.

Notary Public

SANDRA R. EDWARDS
Notary Public, State of Texas
My Commission Expires
SEPT. 14, 1992

APPENDIX A

Qualifications of William E. Avera